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8
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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15
16 SABRINA JEFFRIES, derivatively on behalf of
17 AFFIRM HOLDINGS, INC.,

18 Plaintiff,
19
20 v.
21
22 MAX LEVCHIN, MICHAEL LINFORD,
23 JEREMY LIEW, LIBOR MICHALEK, JENNY
24 J. MING, JEREMY PHILIPS, CHRISTA S.
25 QUARLES, KEITH RABOIS, JACQUELINE
26 D. RESES, and JAMES D. WHITE,
27
28

29 Defendants,
30 and
31 AFFIRM HOLDINGS, INC.,
32
33 Nominal Defendant.

34 Case No.:

35
36 **VERIFIED SHAREHOLDER**
37 **DERIVATIVE COMPLAINT**

38
39 **JURY TRIAL DEMANDED**

INTRODUCTION

2 Plaintiff Sabrina Jeffries (“Plaintiff”), by and through his/her counsel, derivatively on behalf
3 of Nominal Defendant Affirm Holdings, Inc. (“Affirm” or the “Company”), submits this Verified
4 Shareholder Derivative Complaint against Defendants and alleges the following upon information
5 and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal
6 knowledge. Plaintiff’s information and belief is based upon, among other things, his/her counsel’s
7 investigation, which included, *inter alia*, review and analysis of (i) regulatory filings made by Affirm
8 with the United States Securities and Exchange Commission (“SEC”); (ii) press releases issued and
9 disseminated by Affirm; (iii) Securities Class Action (defined herein) against certain officers and
10 members of the Company’s Board of Directors (the “Board”) alleging issuance of false and
11 misleading statements of material fact and the omission of material facts necessary to make other
12 statements made not misleading, between February 12, 2021 and December 15, 2021 (the “Relevant
13 Period”) with respect to Affirm’s business, operations, and prospects; and (iv) other publicly
14 available information, including media and analyst reports, concerning Affirm.

NATURE OF THE ACTION

16 1. This is a shareholder derivative action asserted on behalf of Nominal Defendant
17 Affirm against certain officers and the members of the Company's Board.

18 2. Affirm is a financial technology company that offers “buy now, pay later” (“BNPL”)
19 a type of short-term financing. The Company provides loan services to consumers through
20 partnerships with participating merchants.

21 3. BNPL enables consumers to make purchases and pay for them over time with little
22 to no interest. Compared to traditional credit cards and personal loans, BNPL loans are fairly easy
23 for consumers to get approved for and may not require a credit score inquiry. Unless the consumer
24 fails to pay or makes a late payment, the consumer's credit score will not be affected.

25 4. The BNPL model provides that BNPL companies, such as Affirm, pay for the
26 purchase, and finance a repayment plan with the consumer. The Company's mobile online platform
27 is designed to allow consumers to receive products before fully purchasing them. As of December

1 31, 2021, the Company's platform has been successful, reaching over 11 million consumers across
2 170,000 merchants.

3 5. The BNPL method circumvents credit card companies and large lending institutions,
4 such as banks. The loans that BNPL companies extend to consumers are not reported to the credit
5 bureaus or other BNPL companies.

6 6. Affirm provides small loans to consumers at the point-of-sale ("POS") of a
7 transaction by quickly evaluating a customer's credit worthiness through a seconds-long credit
8 investigation that does not affect the consumer's credit score. The credit check often includes a
9 customer's Fair Isaac Corporation ("FICO") score, prior purchasing and repayment history, and
10 social media presence.

11 7. Because the BNPL model charges little to no interest to consumers. Compared to
12 credit card companies, which charge merchants between a 2% and 4% fee, BNPL companies,
13 including Affirm, generate revenue by charging merchants a fee ranging from 4% to 9.5% of the
14 purchase price.

15 8. The competition among the BNPL companies drives the fee down so that the
16 companies remain competitive. When the various fees per transaction are considered, such as an
17 interchange fee, network fee, issuer processors fee, credit costs, and funding, profit margins for
18 BNPL companies and Affirm are rather thin.

19 9. Despite the higher costs, merchants continue to employ the BNPL model, citing more
20 sales, new customers, and larger purchases.

21 10. Affirm finances many sales in the electronics, home goods, furniture, travel, and
22 home fitness industries.

23 11. On December 16, 2021, due to widespread concern regarding the BNPL business
24 model, the Consumer Financial Protection Bureau ("CFPB") ordered Affirm to gather data on the
25 risks and benefits of BNPL, citing concern over accumulating debt, regulatory arbitrage, and data
26 harvesting.

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12. On this news, Affirm's stock price dropped \$11.74, or 10.58%, to close at \$99.24 on
 1 December 16, 2021 .

13. Throughout the Relevant Period, Defendants made materially false and/or misleading
 4 statements and failed to disclose material adverse facts about the Company's business, operations,
 5 and prospects. Specifically, Defendants failed to disclose to investors (i) the Company's business
 6 model raised massive consumer debt, regulatory arbitrage, and data harvesting; (ii) as a result, the
 7 Company faced an increased risk for regulatory inquiry, investigation, and enforcement; and (iii) the
 8 Company failed to maintain internal controls.; and (iv) that, as a result, Defendants' positive
 9 statements about the Company's business, operations, and prospects were materially false,
 10 misleading, and lacked a reasonable basis.

11. As a direct and proximate result of the misconduct described herein by Individual
 12 Defendants (defined herein), Affirm has sustained significant damages as described below.

JURISDICTION AND VENUE

14. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because the Complaint
 15 alleges a claim for violations of Section 14(a) of the Exchange Act and SEC Rule 14a-9. The Court
 16 has supplemental jurisdiction over the pendent state law claims pursuant to 28 U.S.C. § 1337(a)
 17 because the state law claims form part of the same case or controversy. This action is not a collusive
 18 one designed to confer jurisdiction on a court of the United States that it would not otherwise have.

19. This Court has jurisdiction over each defendant because they reside in this District or
 20 have sufficient minimum contacts with this District to render the exercise of jurisdiction by the Court
 21 permissible under traditional notions of fair play and substantial justice. The Court has personal
 22 jurisdiction over the nominal defendant because it is authorized to do business in this state and has
 23 consented to service in this state.

24. Venue is proper in this District pursuant to 28 U.S.C. § 1331 because one or more of
 25 the defendants either resides in or maintains offices in this District, a substantial portion of the
 26 transactions and wrongs complained of herein, including the defendants' primary participation in
 27 the wrongful acts detailed herein and violation of fiduciary duties owed to Affirm occurred in this

1 District, and defendants have received substantial compensation in this District by doing business
 2 here and engaging in numerous activities that had an effect in this District.

3 **PARTIES**

4 18. Plaintiff is a shareholder of Affirm. She was a shareholder during the time of the
 5 wrongdoing and has continuously held stock in the Company at all times relevant to the wrongdoing
 6 by Defendants alleged herein.

7 19. Nominal Defendant Affirm is incorporated under the laws of Delaware, and its
 8 principal executive offices are located at 650 California Street, San Francisco, California 94108.
 9 Affirm's common stock trades on the NASDAQ Stock Exchange ("NASDAQ") under the symbol
 10 "AFRM."

11 20. Defendant Max Levchin ("Levchin") has served as a member of the Board since
 12 2012. According to the Company's Schedule 14A Proxy Statement filed with the SEC on October
 13 20, 2021 (the "2021 Proxy Statement"), as of October 1, 2021, Defendant Levchin beneficially
 14 owned 27,220,766 shares of the Company's common stock, representing 29.2% of the Company's
 15 total outstanding common stock as of that date. Given that the price per share of the Company's
 16 common stock at the close of trading on October 1, 2021 was \$117.85, Defendant Levchin
 17 beneficially owned approximately \$3.2 billion worth of Affirm stock. For the fiscal year ended June
 18 30, 2021 (the "2021 Fiscal Year"), Defendant Levchin received \$451,207,726 in total compensation
 19 from the Company. This included \$10,000 in salary, \$451,052,591 in option awards, and \$145,135
 20 in all other compensation.¹

21 21. Defendant Jeremy Liew ("Liew") has served as a member of the Board since 2013.
 22 He has served as a member of the Nominating and Governance Committee since at least 2021 and
 23 as Chair of the Compensation Committee since at least 2021. According to the 2021 Proxy
 24 Statement, as of October 1, 2021, Defendant Liew beneficially owned 9,317,422 shares of the

25 ¹ The option award amount, per the 2021 Proxy Statement "Executive Compensation Tables" states
 26 that the amounts reported "reflect the accounting cost for these awards and do not correspond to the
 27 actual economic value that may be received by the Named Executive Officer upon the sale of any of
 the underlying share of Class A common stock."

1 Company's common stock. Given that the price per share of the Company's common stock at the
 2 close of trading on October 1, 2021 was \$117.85, Defendant Liew owned approximately \$1.1 billion
 3 worth of Affirm stock. For the 2021 Fiscal Year, Defendant Liew received \$246,601 in total
 4 compensation from the Company. This included \$46,583 in fees earned or paid in cash and \$200,018
 5 in stock awards.

6 22. Defendant Libor Michalek ("Michalek") has been a member of the Company's Board
 7 since May 2021. According to the 2021 Proxy Statement, as of October 1, 2021, Defendant Michalek
 8 beneficially owned 2,605,925 shares of the Company's common stock. Given that the price per share
 9 of the Company's common stock at the close of trading on October 1, 2021 was \$117.85, Defendant
 10 Michalek beneficially owned approximately \$307.1 million worth of Affirm stock. For the 2021
 11 Fiscal Year, Defendant Michalek received \$13,591,619 in total compensation from the Company.
 12 This included \$431,667 in salary, \$3,220,073 in stock awards, \$9,736,383 in option awards, and
 13 \$203,496 in all non-equity incentive plan compensation.

14 23. Defendant Jenny J. Ming ("Ming") has served as a member of the Board since
 15 February 2021 and as a member of the Audit Committee since 2021. For the 2021 Fiscal Year,
 16 Defendant Ming received \$887,539 in total compensation from the Company. This included \$25,625
 17 in fees earned or paid in cash and \$861,914 in stock awards.

18 24. Defendant Christa S. Quarles ("Quarles") has served as a member of the Board since
 19 2018. She has served as Chair of the Audit Committee since at least 2021. According to the 2021
 20 Proxy Statement, as of October 1, 2021, Defendant Quarles beneficially owned 245,862 shares of
 21 the Company's common stock. Given that the price per share of the Company's common stock at
 22 the close of trading on October 1, 2021 was \$117.85, Defendant Quarles beneficially owned
 23 approximately \$28,974,836 worth of Affirm stock. For the 2021 Fiscal Year, Defendant Quarles
 24 received \$252,685 in total compensation from the Company. This included \$52,667 in fees earned
 25 or paid in cash and \$200,018 in stock awards.

26 25. Defendant Keith Rabois ("Rabois") has served as a member of the Board since 2013
 27 and as a member of the Audit Committee since at least 2021. According to the 2021 Proxy Statement,

1 as of October 1, 2021, Defendant Rabois beneficially owned 202,700 shares of Company common
 2 stock. Given that the price per share of the Company's common stock at the close of trading on
 3 October 1, 2021 was \$117.85, Defendant Rabois owned approximately \$253,254,754 million worth
 4 of Affirm stock.

5 26. Defendant Jacqueline D. Reses ("Reses") has served as a member of the Board since
 6 2021. For the 2021 Fiscal Year, Defendant Reses received \$889,623 in total compensation from the
 7 Company. This included \$27,708 in fees earned or paid in cash and \$861,914 in stock awards.

8 27. Defendant James D. White ("White") has served as a member of the Board since
 9 2021. For the 2021 Fiscal Year, Defendant White received \$888,581 in total compensation from the
 10 Company. This included \$26,667 in fees earned or paid in cash and \$861,914 in stock awards.

11 28. Relevant Non-Party Noel Watson ("Watson") has served as a member of the Board
 12 since September 2022.

13 29. The following Individual Defendants are collectively referenced herein as the
 14 "Director Defendants": Levchin, Liew, Michalek, Ming, Quarles, Rabois, Reses, and White.

15 30. The following Individual Defendants are collectively referenced herein as the
 16 "Officer Defendants": Levchin and Linford.

17 31. The following Individual Defendants are collectively referenced herein as the "Audit
 18 Committee Defendants": Ming, Quarles, and Rabois.

19 32. The following Individual Defendants are collectively referenced herein as the "Securities Class Action Defendants": Levchin and Linford.

21 33. The Individual Defendants and Nominal Defendant are collectively referenced herein
 22 as "Defendants."

23 34. The following chart identifies the Individual Defendants, their associated references
 24 herein, and other relevant information discussed in more detail below:

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Individual Defendants	Director Defendants	Officer Defendants	Audit Committee Defendants	Securities Class Action Defendants
Levchin	X 2012 - present	X		X
Liew	X 2013 - present			
Linford		X		X
Michalek	X 2021 - present			
Ming	X 2021 – present		X 2021 - present	
Quarles	X 2018 - present		X Chair 2021 - present	
Rabois	X 2013 - present		X 2021 - present	
Reses	X 2021-- present			
White	X 2021 - present			

BACKGROUND

35. Affirm provides consumers with the ability to purchase items upfront, without full payment, based on a BNPL model, whereby consumers receive the item they want and pay for it in monthly installments.

36. Affirm offers POS loans to consumers who may not qualify for credit cards due to having a poor credit score.

37. Affirm offers consumers 0% to 30% Annual Percentage Rate (“APR”) interest rates. The Company weighs the customer’s credit score, credit history, state of the economy, and agreement with the merchant store to determine the interest rate for the purchase.

38. Affirm’s main form of revenue comes from charging merchants a fee between 4% and 10% of the purchase price.

39. Affirm’s BNPL method, particularly its interest-free monthly installment payment plan, purportedly enables consumers to make more frequent purchases and more expensive, larger purchases.

1 40. As a result of the COVID-19 pandemic, Affirm's business skyrocketed, and between
2 2020 and 2021, the Company grew its revenue by 59% year-over-year from 2020 to 2021.

3 41. In the Company's Merchant network revenue section, Affirm's revenue grew 68%
4 year-over-year from 2020 to 2021, and in the Virtual card network revenue section, revenue grew
5 38% year-over-year from 2020 to 2021.

THE INDIVIDUAL DEFENDANTS OWE FIDUCIARY DUTIES TO THE COMPANY AND ITS SHAREHOLDERS

8 42. At all times relevant to this case, the conduct of the Individual Defendants was
9 governed by well-recognized rules to protect the Company and its shareholders, the members of the
10 public who had invested in Affirm.

11 43. Because of their positions as officers and/or directors of the Company and their
12 ability to control its business and corporate affairs, the Individual Defendants owed the Company
13 and its shareholders the fiduciary obligations of good faith, loyalty, and candor and were and are
14 required to use their utmost ability to control and manage the Company in a fair, just, honest, and
15 equitable manner.

16 44. The Individual Defendants were and are required to act in furtherance of the best
17 interests of the Company and its shareholders to benefit all shareholders equally and not in
18 furtherance of their personal interest or benefit.

19 45. Each of the Company's directors owes to the Company and its shareholders fiduciary
20 duties of care and loyalty, including good faith, oversight, and candor, to exercise good faith and
21 diligence in the administration of the affairs of the Company and in the use and preservation of its
22 property and assets.

23 46. Because of their positions of control and authority as directors and/or officers of the
24 Company, the Individual Defendants were able to and did, directly and/or indirectly, exercise control
25 over the wrongful acts alleged herein.

26 47. To discharge their duties, the Individual Defendants were required to exercise
27 reasonable and prudent supervision over the management, policies, practices, and controls of the

1 Company. By virtue of such duties, the officers, and directors of Affirm were required to do the
 2 following:

- 3 • Ensure that the Company complied with its legal obligations and
 4 requirements, including acting only within the scope of its legal authority and
 5 disseminating truthful and accurate statements to the SEC and the investing
 6 public;
- 7 • Conduct the affairs of the Company in a lawful, efficient, and business-like
 8 manner to make it possible for the Company to provide the highest quality
 9 performance of its business, to avoid wasting the Company's assets, and to
 10 maximize the value of the Company's stock;
- 11 • Properly and accurately inform investors and analysts as to the true financial
 12 condition of the Company at any given time, make accurate statements about
 13 the Company's financial results and prospects, and ensure that the Company
 14 maintained an adequate system of financial controls such that the Company's
 15 financial reporting would be true and accurate at all times;
- 16 • Remain informed as to how the Company conducted its operations, and, upon
 17 notice of imprudent or unsound conditions or practices, make reasonable
 18 inquiry into the nature and cause of such conditions and practices, correct
 19 such conditions or practices, and make such disclosures as necessary to
 20 comply with federal and state securities laws; and
- 21 • Ensure that the Company was operated in a diligent, honest, and prudent
 22 manner in compliance with all applicable federal, state, and local laws, rules,
 23 and regulations.

24 48. The Individual Defendants knowingly violated their obligations as directors and
 25 officers of the Company, acting without good faith and consciously disregarding their duties to the
 26 Company and its shareholders despite their knowledge of the risk of serious injury to the Company.

1 49. Because of their positions of control and authority, the Individual Defendants were
2 able to exercise control over the wrongful acts complained of herein, as well as the contents of the
3 various public statements issued by Affirm.

DIRECTOR DEFENDANTS ON THE AUDIT COMMITTEE OWE ADDITIONAL DUTIES

6 50. The Audit Committee Charter (the “Audit Charter”) places additional duties and
7 responsibilities upon the members of the Board’s Audit Committee, which consisted of Ming,
8 Quarles, and Rabois during the Relevant Period.

9 51. Pursuant to the Audit Charter, the overarching duties of the Audit Committee and its
10 members include the following:

- Review and discuss with the Independent Auditor its annual audit plan, including the timing and scope of audit activities, and monitor such plan's progress and results during the year;
- Review with management, the Independent Auditor and the leader of the Corporation's intern audit function, the following: (i) all critical accounting policies and practices used; (ii) any critical audit matters arising from the current period audit; (iii) all alternative treatments of financial information that the Independent Auditor has discussed with management, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the Independent Auditor; (iv) all other material written communications between the Independent Auditor and management, such as any management letter and any schedule of unadjusted differences; and (v) any material financial arrangements of the Corporation which do not appear on the financial statements of the Corporation;
- Resolve all disagreements between the Independent Auditor and management regarding financial reporting.

- 1 • Review the adequacy and effectiveness of the Corporation's accounting and
2 internal control policies and procedures on a regular basis, including the
3 responsibilities, budget, compensation and staffing of the Corporation's
4 internal audit function, through inquiry and discussions with the Independent
5 Auditor, management and the leader of the Corporation's internal audit
6 function; and if applicable, the yearly report prepared by management, and
7 attested to by the Independent Auditor, assessing the effectiveness of the
8 Corporation's internal control over financial reporting and stating
9 management's responsibility for establishing and maintaining adequate
10 internal control over the financial reporting prior to its inclusion in the
11 Corporation's Annual Report on Form 10-K;
- 12 • Review periodically with the Chief Executive Officer, Chief Financial Officer
13 and the Independent Auditor: (i) all significant deficiencies and material
14 weaknesses in the design or operation of internal controls over financial
15 reporting which are reasonably likely to adversely affect the Corporation's
16 ability to record, process, summarize, and report financial information; (ii)
17 any fraud, whether or not material, that involves management or other
18 employees who have a significant role in the Corporation's internal control
19 over financial reporting;
- 20 • Discuss guidelines and policies governing the process by which senior
21 management of the Corporation and the relevant departments of the
22 Corporation, including the internal audit function, assess and manage the
23 Corporation's exposure to risk, as well as the Corporation's major litigation
24 and financial risk exposures and the steps management has taken to monitor
25 and control such exposures it being understood that it is the job of
26 management to assess and manage the Corporation's exposure to risk and that

the Committee's responsibility is to discuss guidelines and policies by which risk assessment is undertaken;

- Provide input to management regarding the selection, review and removal of the leader of the Corporation’s internal audit function;
- Review with management the progress and results of all internal audit projects, and, when deemed necessary or appropriate by the Committee, assign additional internal audit projects to the leader of the Corporation’s internal audit function;
- Review and discuss with the Independent Auditor the results of the year-end audit of the Corporation, including any comments or recommendations of the Independent Auditor, and, based on such review and discussions and on such other considerations as it determines appropriate, recommend to the Board whether the Corporation’s financial statements should be included in the Annual Report on Form 10-K; and
- Review the type and presentation of information to be included in the Corporation’s earnings press releases (especially the use of “pro forma” or “adjusted” information not prepared in compliance with generally accepted accounting principles), as well as financial information and earnings guidance provided by the Corporation to analysts and ratings agencies (which review may be done generally (e.g., discussion of the types of information to be disclosed and type of presentations to be made), and the Committee need not discuss in advance each earnings release or each instance in which the Corporation may provide earnings guidance).
- Prepare the audit committee report required by Item 407(d) of Regulation S-K to be included in the Corporation’s annual proxy statement;

- 1 • Review and approve in advance any services provided by the Independent
2 Auditor to the Corporation's executive officers or members of their
3 immediate family;
- 4 • Review the Corporation's program to monitor compliance with the
5 Corporation's Code of Conduct and meet periodically with the Corporation's
6 Chief Legal Officer to discuss compliance with the Code of Conduct;

7 **DEFENDANTS BREACH THEIR DUTIES
TO THE COMPANY AND ITS SHAREHOLDERS**

9 52. Through a series of communications, Defendants made materially false and
10 misleading statements and failed to disclose material adverse facts about the Company's business,
11 operations, and prospects. Specifically, Defendants failed to disclose to investors (i) the Company's
12 BNPL business model raised massive consumer debt, regulatory arbitrage, and data harvesting;
13 (ii) as a result, the Company faced an increased risk for regulatory inquiry, investigation, and
14 enforcement; and (iii) the Company failed to maintain internal controls; and (iv) that, as a result,
15 Defendants' positive statements about the Company's business, operations, and prospects were
16 materially false, misleading, and lacked a reasonable basis.

17 53. On February 11, 2021, the Company issued a press release announcing its second
18 quarter 2021 financial results ended December 2020. Therein, Defendant Levchin is quoted stating
19 as follows, in relevant part:

20 Since we founded Affirm and through to this day, our mission has been to build
21 **honest financial products** that improve lives. We've aligned our success with
22 the success of both sides of the commerce ecosystem, winning when our consumers
23 and our merchants win . . . As we look ahead, we remain committed to empowering
 consumers to take control of their finances, helping merchants grow their revenue on
 our platform, and developing new innovative solutions to establish the ubiquity of
 our network and breath of our platform.

24 (Emphasis added.)

25 54. On February 17, 2021, the Company filed its second quarter 2021 results on Form
26 10Q with the SEC ("2Q2021"). In its 2Q2021, the Company stated that it "provides consumers with

1 a simpler, more transparent, and flexible alternative to traditional payment options,” and that the
 2 Company’s “mission is to deliver ***honest financial products*** that improve lives.”

3 55. The 2Q2021 also stated as follows:

4 Affirm enables consumers to confidently pay for a purchase over time . . . Consumers
 5 get the flexibility to buy now and make simple monthly payments for their purchases
 6 and merchants see . . . an overall more satisfied customer base. Unlike legacy
 7 payment options and our competitors’ product offerings, which charge deferred or
 compounding interest and unexpected costs, we disclose up-front to consumers
 exactly what they will owe — no hidden fees, no penalties.

8 56. The 2Q2021 stated as follows regarding the Company’s failure to comply with law
 9 and regulatory requirements.

10 While we have developed policies and procedures designed to assist in compliance
 11 with these laws and regulations, no assurance is given that our compliance policies
 12 and procedures will be effective. Failure to comply with these laws and with
 13 regulatory requirements applicable to our business could subject us to damages,
 revocation of licenses, class action lawsuits, administrative enforcement actions, and
 civil and criminal liability, which may harm our business.

14 57. Defendants Levchin and Linford attested to the accuracy of the certifications pursuant
 15 to Rule 13a-14(a) and 15d-14(a) under the Exchange Act and the Sarbanes-Oxley Act of 2002
 16 (“SOX”) attached to the 2Q2021.

17 58. On May 10, 2021, the Company issued a press release announcing its third quarter
 18 financial results ended March 31, 2021. Therein, Defendant Levchin is quoted as stating that
 19 “Affirm’s strong third quarter results reflect continued progress toward building the most valuable
 20 and transparent financial network for consumers and merchants.”

21 59. In the same press release, Defendant Levchin stated, “[d]uring the period, we more
 22 than doubled the number of merchants on our platform, accelerated GMV growth to 83%, and
 23 increased active consumers by 60% year-over-year.” He continued touting the Company’s
 24 momentum, stating as follows:

25 We are seeing strong momentum in our business as we advance our growth strategy.
 26 In recent weeks, we have activated Shop Pay Installments powered by Affirm for
 27 more than 10,000 Shopify merchants. We expect this number to significantly increase
 as we move towards general availability in June. Looking ahead, we believe the
 strengthening health of the consumer, Affirm’s deep and diverse merchant

1 partnerships, and our unrivaled technology will position us to capture a substantial
 2 share of our expanding market opportunities. We are just getting started and we look
 3 forward to demonstrating the full power of Affirm as the economy continues to
 4 reopen.

5 60. On May 17, 2021, the Company filed a 10-Q with the SEC detailing the Company's
 6 financial results for the third quarter ended March 31, 2021 ("3Q2021"). Therein, the Company
 7 restated as set forth in ¶¶53-54, *supra*, that the Company "provides consumers with a simpler, more
 8 transparent, and flexible alternative to traditional payment options. Our mission is to deliver **honest**
 9 **financial products** that improve lives."

10 61. Defendants Levchin and Linford attested to the accuracy of these statements in signed
 11 Sarbanes-Oxley ("SOX") certifications.

12 62. On September 9, 2021, the Company issued a press release announcing its fourth
 13 quarter and fiscal year ended June 30, 2021 results. In relevant part, the press release stated as
 14 follows:

15 "Affirm's strong results this quarter and fiscal year demonstrate the progress we are
 16 making in rapidly expanding our network," said Max Levchin, Founder and Chief
 17 Executive Officer of Affirm. "More consumers and merchants are continuing to
 18 choose Affirm because of our ability to offer a variety of ways to pay, thanks to our
 19 unrivaled technology. During the fourth quarter, we increased the number of
 20 merchants on our platform by more than fivefold, more than doubled gross
 21 merchandise volume and grew active consumers by 97% year over year." Levchin
 22 continued, "The secular shift toward flexible and transparent financial products
 23 continues to accelerate. With our superior technology, Affirm is strongly positioned
 24 to build a more valuable two-sided network for consumers and merchants. We remain
 25 focused on extending our leadership position with our core products, while
 26 capitalizing on our vast opportunities to empower more people with the new ones we
 27 continue to launch."

28 63. On September 17, 2021, the Company filed its 2021 annual report on Form 10-K with
 29 the SEC ("10K2021"). Therein, the Company stated that Affirm is "transparent and honest—with
 30 our consumers and with each other. That is why there are no hidden fees or tricks associated with
 31 the loans facilitated through our platform."

32 64. Regarding the evaluation of the Company's disclosure controls and procedures, the
 33 10K2021 stated as follows:

34 Our management, with the participation of our Chief Executive Officer and our Chief
 35 Financial Officer has evaluated the effectiveness of our disclosure controls and
 36 procedures. . . . Based on this evaluation, our Chief Executive Officer and our Chief
 37

1 Financial Officer concluded that disclosure controls and procedures were effective as of June 30, 2021.

2 65. Defendants Levchin and Linford attested to the accuracy of the 10K2021 in SOX
3 certifications.

4 66. On October 20, 2021, the Company filed the 2021 Proxy Statement with the SEC.
5 Defendants Levchin, Liew, Linford, Michalek, Ming, Quarles, Rabois, Reses, and White solicited
6 the 2021 Proxy Statement filed pursuant to Section 14(a) of the Exchange Act, which contained
7 material misstatements and omissions.

8 67. The 2021 Proxy Statement called for Company shareholders to vote to, *inter alia*,
9 (1) elect Defendants Michalek and Reses to the Board to hold office until 2024; (2) approve, via
10 non-binding advisory vote, the frequency of future non-binding votes to approve the compensation
11 of the Company’s named executive officers, including Defendants Levchin and Michalek; and
12 (3) ratify the appointment of Deloitte & Touche LLP as the Company’s independent registered
13 public accounting firm for the fiscal year ending June 30, 2022.

14 68. With respect to the Company's Code of Conduct, the 2021 Proxy Statement stated
15 that “[o]ur Board has adopted Corporate Governance Guidelines [and] has adopted a Code of Ethics
16 and Business Conduct that applies to all of our employees, officers, and directors, including our
17 chief executive officer, chief financial officer, and other executive and senior financial officers.”

18 69. The 2021 Proxy Statement also discussed the “Role of the Board in Risk Oversight”;

19 One of the key functions of our Board is informed oversight of our risk
20 management processes which risks include, among others, strategic, financial,
21 business, and operational, cybersecurity, legal and regulatory compliance, and
22 reputational risks. Our Board does not have a standing risk committee, but rather
23 administers this oversight function directly through the Board as a whole, as
24 well as through its standing committees that address risks inherent in their respective
areas of oversight. In particular, our Board is responsible for monitoring and assessing
strategic risk exposure. Our Audit Committee is responsible for discussing our major
litigation and financial risk exposures and the steps our management has taken to
monitor and control these exposures, including guidelines and policies with respect to
risk assessment and risk management.

25 In addition to oversight of the performance of our external audit function, our
26 Audit Committee also monitors compliance with legal and regulatory
27 requirements. Our Nominating and Governance Committee develops and reviews our
Corporate Governance Guidelines and reviews related party transactions. Our
Compensation Committee reviews with management our compensation

1 arrangements to evaluate whether any of our compensation policies and programs
 2 has the potential to encourage excessive risk-taking and reviews discussed the
 3 relationship between risk management policies and practice, corporate strategy and
 4 our compensation arrangements.

5 70. Under the heading “Pay-for-Performance” the 2021 Proxy Statement stated as
 6 follows:

7 We believe our executive compensation program is reasonable, competitive, and
 8 appropriately balances the goals of attracting, motivating, rewarding, and retaining
 9 our Named Executive Officers with the goal of aligning their interests with those of
 10 our stockholders. To ensure this alignment and to motivate and reward individual
 11 initiative and effort, a substantial portion of our Named Executive Officers’ target
 12 annual total direct compensation opportunity is both variable in nature and “at-risk.”

13 71. Regarding the Company’s Pay-for-Performance philosophy, the 2021 Proxy
 14 Statement stated that the majority of the Company’s named executive officers “target annual direct
 15 compensation is directly linked to our financial, operational, and strategic results and our stock price
 16 performance.”

17 72. Under Executive Compensation Philosophy and Objectives, the 2021 Proxy
 18 Statement stated as follows:

19 Our executive compensation program is guided by our overarching philosophy of
 20 paying for high and demonstrable performance. We strive to compensate our Named
 21 Executive Officers in a manner that is competitive, rewards achievement of our
 22 business objectives, and aligns the interests of our Named Executive Officers with
 23 those of our stockholders. Consistent with this philosophy, we have designed our
 24 executive compensation program to achieve the following primary objectives:

- 25 • provide market competitive compensation and benefit levels that will attract,
 26 motivate, reward and retain our Named Executive Officers within the context
 27 of responsible cost management;
- establish a direct link between our financial and operational results and
 28 strategic objectives and the compensation of our Named Executive Officers;
- align the interests and objectives of our Named Executive Officers with those
 29 of our stockholders by linking their long-term incentive compensation
 30 opportunities to stockholder value creation and their cash incentives to our
 31 annual performance; and
- offer total compensation opportunities to our Named Executive Officers that,
 32 while competitive, are internally consistent and fair.

33 Generally, we structure the annual compensation of our Named Executive Officers
 34 using three principal elements: base salary, short-term cash incentive opportunities,
 35 and long-term equity incentive opportunities in the form of equity awards. The design

1 of our executive compensation program is influenced by a variety of factors, with the
 2 primary goals being to align the interests of our Named Executive Officers and
 3 stockholders and to link pay with performance.
 4

5 73. The 2021 Proxy Statement also granted equity awards of 347,143 in option shares
 6 and 168,163 in restricted stock units (“RSUs”) to Linford and 443,571 in option shares and 112,653
 7 in RSUs to Michalek.
 8

9 74. Defendants Levchin, Liew, Linford, Michalek, Ming, Quarles, Rabois, Reses, and
 10 White caused the 2021 Proxy Statement to be false and misleading by failing to disclose that: (1) the
 11 Company’s business model fostered massive consumer debt, regulatory arbitrage, and data
 12 harvesting; (2) as a result, the Company faced an increased risk for regulatory inquiry, investigation,
 13 and enforcement; and (3) the Company failed to maintain internal controls. As a result, Affirm’s
 14 public statements were materially false and misleading at all relevant times.
 15

16 75. Defendants Levchin, Liew, Linford, Michalek, Ming, Quarles, Rabois, Reses, and
 17 White also caused the 2021 Proxy Statement to be false and misleading by failing to disclose that
 18 (1) although the Company claimed its directors and officers adhered to the Code of Conduct and that
 19 it would disclose waivers of the policy, the Individual Defendants violated the Code of Conduct
 20 either without waivers or without such waivers being disclosed and that (2) the Board’s and its
 21 committees’ risk oversight functions were not properly being exercised, as evidenced by the
 22 occurrence of the wrongdoing alleged herein.
 23

24 76. On November 10, 2021, the Company issued a press release announcing its first
 25 quarter 2022 financial results for the period that ended on September 30, 2021. In relevant part, the
 26 press release quoted Defendant Levchin as stating the following:
 27

28 “Our unrivaled technology, industry-leading talent and the investments we are
 29 making are delivering results. Over the last year, we expanded our network by
 30 increasing the number of active merchants on our platform to over 100,000 and more
 31 than doubling the number of active consumers. These deep connections and our
 32 partnerships with merchants drove growth in GMV, frequency of engagement, and
 33 revenue.”
 34

35 Levchin continued, “We are pleased with our performance and proud of the
 36 contributions of our nearly 2,000-strong Affirm team. At the same time, there is a lot
 37 more for us to build to achieve our objectives, and we are even more excited about
 38 the opportunities ahead. We remain focused on continuing to delight and grow both
 39

1 sides of our network by giving people even more reasons to choose Affirm with more
 2 products and in more markets.”

3 77. Under the heading “Recent Business Highlights,” the same press release announced
 4 that the Company had tightened its relationship with Amazon:

5 4 Today, the Company announced that it has expanded its relationship with Amazon.
 6 Affirm will be generally available to support all eligible purchases of \$50 dollars or
 7 more on Amazon.com and the Amazon shopping app in the United States. Consumers
 8 will have the option to split the total cost of eligible purchases into monthly payments
 9 at checkout with no late or hidden fees, ever. As part of the amended agreement,
 10 Affirm will serve as Amazon’s only third party, non credit card, buy now, pay later
 11 (“BNPL”) option in the U.S. Until January 2023, Amazon will be subject to certain
 12 restrictions on providing other installment products in the U.S. by other BNPL
 13 providers. Affirm will also be integrated into Amazon Pay’s digital wallet in the U.S.
 14 In conjunction with the amended agreement, Amazon will receive multiple tranches
 15 of warrants to purchase shares of Affirm’s Class A Common Stock, some of which
 16 are subject to satisfaction of certain performance obligations and vesting conditions.

17 78. In the same press release, Defendant Linford is quoted as follows:

18 12 During the first quarter, we continued to scale our two-sided network, delivering
 19 robust top-line growth, strong unit economics and even greater capital efficiency. We
 20 are seeing traction across all products and verticals, and deepening our trusted
 21 relationships with merchants and consumers alike. As we continue to capitalize on
 22 our hyper growth phase, we are strongly positioning ourselves for the long-term by
 23 investing in our key competitive advantages in technology and talent.

24 69 79. On November 15, 2021, the Company filed its first quarter 2022 financial results on
 25 Form 10-Q with the SEC (“1Q2022”) Therein, the Company reiterated that Affirm “provides
 26 consumers with a simpler, more transparent, and flexible alternative to traditional payment options.
 27 Our mission is to deliver ***honest financial products*** that improve lives” as set forth in ¶¶ 53-54, 60,
 28 *supra*.

80. Defendants Levchin and Linford attested to the accuracy of the 1Q2022 in signed
 21 SOX certifications.

22 81. The statements identified in ¶¶ 53-56, 58-60, 62-64, 68-73, and 76-79 were materially
 23 false and misleading and failed to disclose material adverse facts about the Company’s business,
 24 operations, and prospects. Specifically, Defendants failed to disclose to investors that: (i) the
 25 Company’s BNPL business model raised massive consumer debt, regulatory arbitrage, and data
 26 harvesting; (ii) as a result, the Company faced an increased risk for regulatory inquiry, investigation,

1 and enforcement; and (iii) the Company failed to maintain internal controls.; and (iv) that, as a result,
 2 Defendants' positive statements about the Company's business, operations, and prospects were
 3 materially false, misleading, and lacked a reasonable basis.

4 **THE TRUTH IS REVEALED**

5 82. On December 16, 2021, the CFPB announced an investigation into five companies
 6 that utilize the BNPL business model, including Affirm, stating as follows in a press release on that
 7 day:

8 Today the [CFPB] issued a series of orders to five companies offering "buy now, pay
 9 later" (BNPL) credit. The orders to collect information on the risks and benefits of
 10 these fast-growing loans went to Affirm. . . . The CFPB is concerned about
 accumulating debt, regulatory arbitrage, and data harvesting in a consumer credit
 market already quickly changing with technology.

11 "Buy now, pay later is the new version of the old layaway plan, but with modern,
 12 faster twists where the consumer gets the product immediately but gets the debt
 immediately too," said CFPB Director Rohit Chopra. "We have ordered Affirm . . .
 13 to submit information so that we can report to the public about industry practices and
 risks."

14 Buy now, pay later credit is a type of deferred payment option that generally allows
 15 the consumer to split a purchase into smaller installments, typically four or less, often
 16 with a down payment of 25 percent due at checkout. The application process is quick,
 involving relatively little information from the consumer, and the product often
 17 comes with no interest. Lenders have touted BNPL as a safer alternative to credit card
 debt, along with its ability to serve consumers with scant or subprime credit histories.

18 * * *

19 The law requires that the CFPB monitor consumer financial markets and enables the
 20 agency to require market players to submit information to inform this monitoring.
 21 The CFPB expects to publish aggregated findings on insights learned from this
 inquiry. Today's orders seek to illuminate the range of these consumer credit products
 and their underlying business practices. Specifically, the bureau is concerned about:

22

- 23 ○ **Accumulating debt:** Whereas the old-style layaway installment loans were
 24 typically used for the occasional big purchase, people can quickly become
 25 regular users of BNPL for everyday discretionary buying, especially if they
 26 download the easy-to-use apps or install the web browser plugins. If a
 consumer has multiple purchases on multiple schedules with multiple
 companies, it may be hard to keep track of when payments are scheduled.
 And when there is not enough money in a consumer's bank account, this can
 potentially result in charges by both the consumer's bank and the BNPL
 provider. Because of the ease of getting these loans, consumers can end up
 spending more than anticipated.

- 1 ○ **Regulatory arbitrage:** Some BNPL companies may not be adequately
2 evaluating what consumer protection laws apply to their products. For
3 example, some BNPL products do not provide certain disclosures, which
4 could be required by some laws. And while the BNPL application may look
5 similar to a standard checkout with a credit card, protections that apply to
6 credit cards may not apply to BNPL products. Many BNPL companies do not
7 provide dispute resolution protections available to users of other forms of
8 credit, like credit cards. And finally, depending on what rules the lender is
9 following, different late fees and policies apply.
- 10 ○ **Data harvesting:** BNPL lenders have access to the valuable payment
11 histories of their customers. Some have used this collected data to create
12 closed loop shopping apps with partner merchants, pushing specific brands
13 and products, often geared toward younger audiences. As competitive forces
14 pressure the merchant discount, lenders will need to find other sources of
15 revenue to maintain growth and profitability. The Bureau would like to better
16 understand practices around data collection, behavioral targeting, data
17 monetization and the risks they may create for consumers.

10 The BNPL product has seen growth internationally and many other countries are also
11 taking a close examination of its providers. As part of today's inquiry, the Bureau is
12 working with its international partners in Australia, Sweden, Germany and the UK.

13 83. On this news, Affirm's stock fell \$11.74 per share, or 0.58%. to close at \$99.24 per
14 share on December 16, 2021.

15 84. On January 12, 2022, the CFPB issued a press release updating investors and the
16 general public on the status and position of the CFPB's investigation into Affirm and the four other
17 BNPL businesses:

18 Several weeks ago, we issued a market-monitoring inquiry into "buy-now, pay later"
19 (BNPL) products and business practices. Now we are inviting anyone interested in
20 this market to submit comments—including families, small businesses, and
21 international regulators.

22 Use of BNPL has seen astronomical growth. Companies like Affirm, Afterpay,
23 Klarna, Paypal, and Zip (formerly Quadpay) have become almost ubiquitous in the
24 retail market since the pandemic. This past holiday season, usage spiked even higher,
25 especially among young people. Some analysts have suggested that BNPL has
26 rerouted big holiday shopping money away from the credit card companies towards
27 these companies, putting an enormous amount of consumer debt on their books.

28 People encounter BNPL credit at the point of sale either online or at traditional retail
29 stores. The loans are presented as a type of deferred payment option that generally
30 allows someone to split a purchase into smaller installment payments, often with a
31 down payment of 25 percent. The application process is quick, involving relatively
32 little information from the buyer, and the buyer usually pays no interest.

33 For the buyer, it may seem like they are getting something for nothing. And it can be
34 appealing because not only is it convenient but instead of an upfront cost of \$100,
35 they pay \$25. But we are concerned there may be systemic, underlying problems,

1 particularly around accumulating debt, regulatory arbitrage, and data harvesting in a
 2 consumer credit market already quickly changing with technology. For some people,
 3 BNPL could look like a standard payment method when they are really taking on a
 4 new form of debt.

5 While BNPL has caught the eye of many investors, including both big tech companies
 6 and significant venture capitalists, it has also caught the eye of fellow regulators
 7 around the world, including ones in Ireland, Germany, and the EU. Sweden already
 8 has a BNPL law that requires merchants to first present consumer options that do not
 9 contribute to debt. Last year, Her Majesty's Treasury in the United Kingdom signaled
 10 plans for greater regulation. And in late October, the Reserve Bank of Australia said
 11 that BNPL firms will no longer be able to bar merchants from passing on surcharges
 12 for their services.

13 In the U.S., Congress has tasked us with ensuring that markets for consumer financial
 14 products and services are fair, transparent, and competitive. To that end, it has
 15 authorized us to require participants in the marketplace to provide information that
 16 helps us monitor risks to consumers and to publish aggregated findings that are in the
 17 public interest. The orders issued on December 16 required five different buy now,
 18 pay later lenders to provide information on the risks and benefits of their products.

19 **AN INVESTOR FILES A SECURITIES CLASS ACTION**

20 85. On December 8, 2022, an alleged purchaser of Company stock filed a securities class
 21 action complaint, captioned *Kusnier v Affirm Holdings et al.*, Case No. 3:22-cv-07770-WHO in this
 22 District against Affirm and Defendants Levchin and Linford (the "the Securities Class Action"). The
 23 Securities Class Action alleges that throughout the class period of February 12, 2021 to December
 24 15, 2021, Defendants made materially false and/or misleading statements, failing to disclose material
 25 adverse facts about the Company's business, operations, and prospects. Specifically, the Securities
 26 Class Action alleges that defendants failed to disclose to investors that (i) Affirm's BNPL service
 27 facilitated excessive consumer debt, regulatory arbitrage, and data harvesting; (ii) the foregoing
 28 subjected Affirm to a heightened risk of regulatory scrutiny and enforcement action; and (iii) as a
 result, the Company's public statements were materially false and misleading at all relevant times.

29 **THE INDIVIDUAL DEFENDANTS' MISCONDUCT
 30 DIRECTLY AND PROXIMATELY CAUSES DAMAGES TO AFFIRM**

31 86. As a result of the Individual Defendants' improprieties, Affirm disseminated
 32 improper public statements concerning Affirm's operations, prospects, and internal controls. This
 33 misconduct has devastated Affirm's credibility.

1 87. As a direct and proximate result of the Individual Defendants' actions, Affirm has
 2 expended, and will continue to expend, significant sums of money defending and paying any
 3 settlement or judgment in the Securities Class Action.

4 88. As a direct and proximate result of the Individual Defendants' actions as alleged
 5 above, Affirm's market capitalization has been substantially damaged, losing millions of dollars in
 6 value because of the conduct described herein.

7 89. Lastly, the actions of the Individual Defendants have irreparably damaged Affirm's
 8 corporate image and goodwill. For at least the foreseeable future, Affirm will suffer from what is
 9 known as the "liar's discount," a term applied to the stocks of companies that have been implicated
 10 in illegal behavior and have misled the investing public, such that Affirm's ability to raise equity
 11 capital or debt on favorable terms in the future is now impaired.

12 **CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION**

13 90. In committing the wrongful acts alleged herein, the Individual Defendants have
 14 pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and
 15 conspired with one another in furtherance of their wrongdoing. The Individual Defendants caused
 16 the Company to conceal the true facts as alleged herein. The Individual Defendants further aided and
 17 abetted and/or assisted each other in breaching their respective duties.

18 91. The purpose and effect of the conspiracy, common enterprise, and/or common course
 19 of conduct were, among other things, to (i) facilitate and disguise the Individual Defendants'
 20 violations of law, including breaches of fiduciary duty and unjust enrichment; (ii) conceal adverse
 21 information concerning the Company's operations, financial condition, future business prospects
 22 and internal controls; and (iii) artificially inflate the Company's stock price.

23 92. The Individual Defendants accomplished their conspiracy, common enterprise,
 24 and/or common course of conduct by causing the Company purposefully, recklessly, or with gross
 25 negligence to engage in improper accounting methods, conceal material facts, fail to correct such
 26 misrepresentations, and violate applicable laws. In furtherance of this plan, conspiracy, and course of
 27 conduct, Individual Defendants collectively and individually took the actions set forth herein. The

1 Individual Defendants described herein were direct, necessary, and substantial participants in the
2 common enterprise, and/or common course of conduct complained here because the action described
3 herein occurred under the authority and approval of the Board.

4 93. Each of the Individual Defendants aided, abetted, and rendered substantial assistance
5 in the wrongs complained of herein. In taking such actions to substantially assist the commission of
6 the wrongdoing complained of herein, each of the Individual Defendants acted with actual or
7 constructive knowledge of the primary wrongdoing, either took direct part in or substantially assisted
8 the accomplishment of that wrongdoing and was or should have been aware of his or her overall
9 contribution to and furtherance of the wrongdoing.

10 94. At all times relevant hereto, each of the Individual Defendants was the agent of each
11 of the other Individual Defendants and Affirm and was at all times acting within the course and scope
12 of such agency.

13 **PLAINTIFF HAS BEEN A STOCKHOLDER AT ALL RELEVANT**
14 **TIMES AND WILL FAIRLY AND ADEQUATELY REPRESENT**
THE COMPANY'S AND ITS SHAREHOLDERS' INTERESTS

15
16 95. Plaintiff incorporates by reference and realleges each and every allegation set forth
17 above as though fully set forth herein.

18 96. Plaintiff brings this action derivatively in the right and for the benefit of the Company
19 to redress the Individual Defendants' breaches of fiduciary duties.

20 97. Plaintiff is an owner of Affirm common stock and was an owner of Affirm common
21 stock at all times relevant hereto.

22 98. Plaintiff will adequately and fairly represent the interests of the Company and its
23 shareholders in enforcing and prosecuting the Company's rights.

24 **DEMAND IS FUTILE BECAUSE EACH DIRECTOR DEFENDANT**
25 **FACES A SUBSTANTIAL LIKELIHOOD OF PERSONAL LIABILITY**

26 99. At the time Plaintiff commenced this action, the Board consisted of nine directors,
27 including Director Defendants (Levchin, Liew, Michalek, Ming, Quarles, Rabois, Reses, and White)

1 and Relevant Non-Party Watson. The Director Defendants are incapable of making an independent
 2 and disinterested decision to institute and vigorously prosecute this action.

3 100. The Director Defendants all face a substantial likelihood of liability for their
 4 individual misconduct. They were directors throughout the time of the false and misleading
 5 statements and, as such, had a fiduciary duty to ensure the accuracy of the Company's SEC filings,
 6 press releases, and other public statements and presentations concerning Affirm's business,
 7 operations, prospects, internal controls, and financial statements.

8 101. Moreover, the Director Defendants owed and owe a duty to, in good faith and with
 9 due diligence, exercise reasonable inquiry, oversight, and supervision to ensure that the Company's
 10 internal controls were sufficiently robust and effective and were being implemented effectively, and
 11 to ensure that the Board's duties were being discharged in good faith and with the required diligence
 12 and due care. Instead, they knowingly and consciously reviewed, authorized, and/or caused the
 13 publication of the materially false and misleading statements discussed above that caused the
 14 Company's stock to trade at artificially inflated prices.

15 102. The Director Defendants also ignored red flags of the Officer Defendants' false and
 16 misleading statements in the form of publicly available analyses. Such analyses asserted that the
 17 Company faced an increased risk of regulatory investigations due to accruing consumer debt,
 18 regulatory arbitrage, and data harvesting.

19 103. The Director Defendants also approved the 2021 Proxy Statement and, therefore, face
 20 a substantial likelihood of personal liability because of the false and misleading statements contained
 21 therein.

22 104. The Director Defendants face a substantial likelihood of personal liability because of
 23 their conscious and knowing authorization of false and misleading statements, failure to timely
 24 correct such statements, failure to take necessary and appropriate steps to ensure that the Company's
 25 internal controls were sufficiently robust and effective and were being implemented effectively,
 26 failure to take necessary and appropriate steps to ensure that the Board's duties were being
 27

1 discharged in good faith and with the required diligence constitute breaches of the fiduciary duties
2 of loyalty and good faith, for which the Director Defendants face a substantial likelihood of liability.

3 105. If the Director Defendants were to bring a suit on behalf of Affirm to recover damages
4 sustained as a result of this misconduct, they would expose themselves to significant liability. For
5 this reason, Plaintiffs' making a demand would be futile.

6 **THE AUDIT COMMITTEE DEFENDANTS FACE**
7 **A GREATER LIKELIHOOD OF PERSONAL LIABILITY**

8 106. The Audit Committee Defendants (Ming, Quarles, and Rabois), as members of the
9 Audit Committee during the Relevant Period, participated in and knowingly approved the filing of
10 false financial statements. More specifically, as members of the Audit Committee, the Audit
11 Committee Defendants were obligated to review the Company's annual and quarterly reports to
12 ensure their accuracy. Instead, the Audit Committee Defendants, as members of the Audit
13 Committee, failed to ensure the integrity of the Company's financial statements and financial
14 reporting process and its systems of internal accounting and financial controls and other financial
15 information provided by the Company, as required by the Audit Committee Charter. For this reason,
16 demand is futile as to the Audit Committee Defendants.

17 **FIRST CAUSE OF ACTION**
18 **Against the Individual Defendants for Breach of Fiduciary Duties**

19 107. Plaintiff incorporates by reference and realleges each and every allegation set forth
20 above as though fully set forth herein.

21 108. Each Individual Defendant owed to the Company the duty to exercise candor, good
22 faith, and loyalty in the management and administration of Affirm's business and affairs.

23 109. Each of the Individual Defendants violated and breached his or her fiduciary duties
24 of candor, good faith, loyalty, reasonable inquiry, oversight, and supervision.

25 110. The Individual Defendants' conduct set forth herein was due to their intentional or
26 reckless breach of the fiduciary duties they owed to the Company. The Individual Defendants
27

1 intentionally or recklessly breached or disregarded their fiduciary duties to protect the rights and
 2 interests of Affirm.

3 111. In breach of their fiduciary duties owed and owe to Affirm, the Individual Defendants
 4 willfully or recklessly made, or caused or permitted the Company to make, false and misleading
 5 statements and omissions of material fact that failed to disclose, *inter alia*, (i) the Company's BNPL
 6 business model raised massive consumer debt, regulatory arbitrage, and data harvesting; (ii) as a
 7 result, the Company faced an increased risk for regulatory inquiry, investigation, and enforcement;
 8 and (iii) the Company failed to maintain internal controls.; and (iv) that, as a result, Defendants'
 9 positive statements about the Company's business, operations, and prospects were materially false,
 10 misleading, and lacked a reasonable basis.

11 112. Accordingly, Affirm's public statements were materially false, misleading, and
 12 lacked a reasonable basis during the Relevant Period, thereby causing the stock to trade at artificially
 13 inflated prices.

14 113. The Individual Defendants failed to and caused the Company to fail to rectify any of
 15 the wrongs described herein or correct the false and misleading statements and omissions of material
 16 fact referenced herein, thereby rendering themselves personally liable to the Company for breaching
 17 their fiduciary duties.

18 114. Also, in breach of their fiduciary duties, the Individual Defendants failed to maintain
 19 an adequate system of oversight, disclosure controls and procedures, and internal controls.

20 115. The Individual Defendants had actual or constructive knowledge that the Company
 21 issued materially false and misleading statements, and they failed to correct the Company's public
 22 statements. The Individual Defendants had actual knowledge of the misrepresentations and omissions
 23 of material facts set forth herein or acted with reckless disregard for the truth in that they failed to
 24 ascertain and disclose such facts, even though such facts were available to them. Such material
 25 misrepresentations and omissions were committed knowingly or recklessly and for the purpose and
 26 effect of artificially inflating the price of the Company's securities.

27

28

116. The Individual Defendants had actual or constructive knowledge that they had caused
the Company to improperly engage in the fraudulent schemes set forth herein and to fail to maintain
adequate internal controls. The Individual Defendants had actual knowledge that the Company was
engaging in the fraudulent schemes set forth herein, and that internal controls were not adequately
maintained or acted with reckless disregard for the truth in that they caused the Company to
improperly engage in the fraudulent schemes and to fail to maintain adequate internal controls, even
though such facts were available to them. Such improper conduct was committed knowingly or
recklessly and for the purpose and effect of artificially inflating the price of the Company's
securities. The Individual Defendants, in good faith, should have taken appropriate action to correct
the schemes alleged herein and to prevent them from continuing to occur.

11 117. These actions were not a good-faith exercise of prudent business judgment to protect
12 and promote the Company's corporate interests.

13 118. As a direct and proximate result of the Individual Defendants' breaches of their
14 fiduciary obligations, Affirm has sustained and continues to sustain significant damages. As a result
15 of the misconduct alleged herein, the Individual Defendants are liable to the Company.

SECOND CAUSE OF ACTION
Against the Individual Defendants for
Violations of § 14(A) of the Exchange Act and SEC Rule 14a-9

19 119. Plaintiff incorporates by reference and realleges each and every allegation set forth
20 above as though fully set forth herein.

21 120. Rule 14a-9, promulgated pursuant to Section 14(a) of the Exchange Act, provides
22 that no proxy statement shall contain “any statement which, at the time and in the light of the
23 circumstances under which it is made, is false or misleading with respect to any material fact, or
24 which omits to state any material fact necessary in order to make the statements therein not false or
25 misleading.” 17 C.F.R. § 240.14a-9.

26 121. The 2021 Proxy Statement violated Section 14(a) and Rule 14a-9 because it solicited
27 Affirm stockholder votes for, *inter alia*, director reelection, while simultaneously misrepresenting

1 and/or failing to disclose the Company's shortcomings in connection with the Company's BNPL
2 business model raising massive consumer debt, regulatory arbitrage, and data harvesting.

3 122. The Individual Defendants made untrue statements of material facts and omitted to
4 state material facts necessary to make the statements that were made not misleading in violation of
5 Section 14(a) and Rule 14a-9. By virtue of their positions within the Company and roles in the
6 process and in the preparation of the 2021 Proxy Statement, the Individual Defendants were aware
7 of this information and of their duty to disclose this information in the 2021 Proxy Statement

8 123. The omissions and false and misleading statements in the 2021 Proxy Statement are
9 material in that a reasonable shareholder would consider them important in deciding how to vote on
10 the re-election of directors. Indeed, a reasonable investor would view a full and accurate disclosure
11 as significantly altering the "total mix" of information made available in the 2021 Proxy Statement
12 and in other information reasonably available to stockholders.

13 124. As a direct and proximate result of the dissemination of the false and misleading 2021
14 Proxy Statement that the Individual Defendants used to obtain stockholder approval of and thereby
15 re-elect directors, Nominal Defendant Affirm suffered damage and actual economic losses (i.e.,
16 wrongful re-election of directors) in an amount to be determined at trial.

17 **THIRD CAUSE OF ACTION**
18 **Against the Individual Defendants for Unjust Enrichment**

19 125. Plaintiff incorporates by reference and realleges each and every allegation set forth
20 above, as though fully set forth herein.

21 126. By their wrongful acts, violations of law, and false and misleading statements and
22 omissions of material fact that they made or caused to be made, the Individual Defendants were
23 unjustly enriched at the expense of, and to the detriment of, Affirm.

24 127. The Individual Defendants benefitted financially from the improper conduct,
25 received unjustly lucrative bonuses tied to the false and misleading statements, and received
26 bonuses, stock options, or similar compensation from Affirm that was tied to the performance or
27

1 artificially inflated valuation of Affirm, or received compensation that was unjust in light of the
2 Individual Defendants' bad faith conduct.

3 128. Plaintiff, as a shareholder and representative of Affirm, seeks restitution from the
4 Individual Defendants and seeks an order from this Court disgorging all profits—including from,
5 benefits, and other compensation, including any performance-based or valuation-based
6 compensation—obtained by the Individual Defendants from their wrongful conduct and breach of
7 their fiduciary duties.

8 129. Plaintiff on behalf of Affirm has no adequate remedy at law.

9 **FOURTH CAUSE OF ACTION**
10 **Against the Individual Defendants for Waste of Corporate Assets**

11 130. Plaintiff incorporates by reference and realleges each and every allegation set forth
12 above, as though fully set forth herein.

13 131. As a further result of the foregoing, the Company will incur many millions of dollars
14 of legal liability and/or costs to defend legal actions (evidenced, for example, by the Securities Class
15 Action, to engage in internal investigations, and to lose financing from investors and business from
16 future customers who no longer trust the Company and its products.

17 132. As a result of the waste of corporate assets, the Individual Defendants are each liable
18 to the Company.

19 133. Plaintiff on behalf of Affirm has no adequate remedy at law.

20 **FIFTH CAUSE OF ACTION**
21 **Against all the Individual Defendants for Aiding and Abetting**

22 134. Plaintiff incorporates by reference and realleges each and every allegation set forth
23 above, as though fully set forth herein.

24 135. Each of the Individual Defendants acted and is acting with knowledge of, or with
25 disregard to, the fact that the Defendants are in breach of their fiduciary duties to Affirm and has
26 participated in a conspiracy in breach of fiduciary duties.

1 136. In committing the wrongful acts alleged herein, each of the Individual Defendants
2 has pursued, or joined in the pursuit of, a common course of conduct. The Individual Defendants
3 have acted in concert with and conspired with one another in furtherance of their common plan or
4 design. In addition to pursuing the wrongful conduct that gives rise to their primary liability, the
5 Individual Defendants also aided, abetted, and assisted each other in breaching their respective
6 duties.

7 137. The Individual Defendants collectively and individually initiated and followed a
8 course of conduct that violated the federal securities laws; authorized corporate actions to serve their
9 own personal interests rather than the interests of the Company and its shareholders; misrepresented
10 material facts about the Company, its financial condition, and business prospects; prevented the
11 disclosure of material information necessary to make statements complete and accurate; and failed
12 to implement and maintain an adequate system of internal controls and corporate governance
13 practices.

14 138. The purpose and effect of the Individual Defendants' conspiracy, common enterprise,
15 and common course of conduct was, among other things, to disguise the Defendants' violations of
16 law, including violations of the federal securities laws and breaches of fiduciary duty.

17 139. Each of the Individual Defendants played a direct, necessary, and substantial part in
18 the conspiracy, common enterprise, and common course of conduct complained of herein.

19 140. Each of the Individual Defendants aided, abetted, and rendered substantial assistance
20 in the wrongs complained of herein. In taking such actions to substantially assist the commission of
21 the wrongdoing complained of herein, the Individual Defendants acted with knowledge of the
22 primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and were aware
23 of their overall contributions to and furtherance of the wrongdoing.

PRAYER FOR RELIEF

25 WHEREFORE, Plaintiff demands judgment as follows:

26 A. Declaring that Plaintiff may maintain this derivative action on behalf of Affirm and
27 that Plaintiff is a proper and adequate representative of the Company;

B. Awarding the amount of damages sustained by the Company as a result of the Individual Defendants' breaches of fiduciary duties and violations of the federal securities laws;

C. Awarding prejudgment interest to the Company;

D. Granting appropriate equitable relief to remedy Individual Defendants' breaches of fiduciary duties and other violations of law;

E. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees and costs and expenses; and

F. Granting such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: May 24, 2023

Respectfully submitted,

BRAGAR EAGEL & SQUIRE, P.C.

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Counsel for Plaintiff

VERIFICATION

I, Sabrina Jeffries, hereby verify that I have authorized the filing of the attached Verified Stockholder Derivative Complaint, that I have reviewed the Verified Stockholder Derivative Complaint and that the facts therein are true and correct to the best of my knowledge, information and belief. I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 20, 2023


Sabrina C Jeffries (May 20, 2023 15:57 EDT)

Sabrina Jeffries